

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Wassim Abedrabbo	Team: Squad #12	CCRB Case #: 201607268	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 08/23/2016 1:30 PM	Location of Incident: In front of 228 Audubon Avenue	Precinct: 33	18 Mo. SOL 2/23/2018	EO SOL 2/23/2018	
Date/Time CV Reported Wed, 08/24/2016 11:57 AM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Wed, 08/24/2016 10:09 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jose Genao	10256	948031	033 PCT
2. POM Leonel Checo	20657	936338	033 PCT
3. POM Michael McDonnell	13619	940446	033 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jose Genao	Abuse: Police Officer Jose Genao stopped § 87(2)(b)	
B.POM Jose Genao	Abuse: Police Officer Jose Genao frisked § 87(2)(b)	
C.POM Jose Genao	Abuse: Police Officer Jose Genao searched § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		

Case Summary

On August 24, 2016, § 87(2)(b) walked into the CCRB and filed this complaint.

On August 23, 2016, between the hours of 1:30 p.m. and 3:00 p.m., § 87(2)(b) was standing in front of 228 Audubon Avenue in Manhattan, when a marked police vehicle stopped directly in front of him. Police Officer Jose Genao, Police Officer Leonel Checo, and Police Officer Michael McDonnell, all from the 33rd Precinct, exited the marked vehicle and approached § 87(2)(b). PO Genao allegedly said, “Where is the blunt you were packing?” and he asked § 87(2)(b) what he had in his pockets.

PO Genao then allegedly went “chest-to-chest” with § 87(2)(b) and he began to feel over all of the pockets of § 87(2)(b)’s cargo shorts (**Allegation A and Allegation B**). PO Genao then allegedly placed his hands in the top two pockets of § 87(2)(b)’s cargo shorts (**Allegation C**).

After he did not find anything, PO Genao allegedly asked § 87(2)(b) for his identification. § 87(2)(b) provided his identification card. The officers then re-entered the marked police vehicle, and left.

§ 87(4-b) § 87(2)(g)

§ 87(2)(b) did not receive any summonses and he was not arrested as a result of this incident. This case went past the 90 bench mark because it was returned from mediation.

Video footage was obtained in relation to this case; however, the video footage did not depict the incident under investigation.

Mediation, Civil and Criminal Histories

- On September 19, 2016, this case was forwarded to the Mediation Unit, but it was returned to the Investigations Unit on December 2, 2016, because § 87(2)(b) did not want the complaint mediated.
- As of February 16, 2017, § 87(2)(b) has not filed a Notice of Claim inquiry with the NYC Comptroller’s Office (Board Review 01).
- § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (Board Review 03).
- This is the third CCRB complaint filed against Police Officer Jose Genao, who has a total of two allegations in his CCRB history and who has been a member of service for eight years (see officer history). Of the two allegations against PO Genao, one was fully investigated. A refusal to provide name and shield number allegation was unsubstantiated.
- There has been once CCRB complaint filed against Police Officer Leonel Checo, who has a total of two allegations in his CCRB and who has been a member of service for 12

years (see officer history). Of the two allegations against PO Genao, neither was fully investigated due to an unavailable complainant.

- There have been two CCRB complaints filed against Police Officer Michael McDonnell, who has a total of three allegations in his CCRB history and who has been a member of service for 11 years (see officer history). Of the three allegations against PO McDonnell, two allegations, a frisk and a stop, were fully investigated and substantiated.

Findings and Recommendations

Allegation A –Abuse of Authority: Police Officer Jose Genao stopped § 87(2)(b)

Allegation B –Abuse of Authority: Police Officer Jose Genao frisked § 87(2)(b)

It is undisputed that upon PO Genao stopping his police vehicle and approaching § 87(2)(b) PO Genao questioned § 87(2)(b) as to if he had marijuana in his possession. It is undisputed that after PO Genao asked § 87(2)(b) if he had marijuana twice and § 87(2)(b) said no, PO Genao took additional steps to investigate his suspicion. Additionally, it is undisputed that the investigative steps yielded negative results. Finally, it is undisputed that at the conclusion of the interaction PO Genao told § 87(2)(b) that he was stopped because PO Genao believed that he had a marijuana cigar in his hand.

§ 87(2)(b) stated that after he told PO Genao that he did not have marijuana for the second time and he raised his hands to his side, PO Genao went “chest-to-chest” with § 87(2)(b) and PO Genao began to frisk over all of the pockets of § 87(2)(b) s cargo shorts. § 87(2)(b) was frisked and searched (see Allegation C below) for five to 10 seconds. At the conclusion of the interaction PO Genao told § 87(2)(b) that he “thought” § 87(2)(b) was rolling a marijuana cigar (Board Review 04).

During his CCRB’s statement, PO Genao stated that he was familiar with § 87(2)(b) because he “encountered” him on a date prior to the incident date. PO Genao had not interacted with § 87(2)(b) regarding marijuana or other narcotics, but he had seen him in the neighborhood. Additionally, PO Genao stated that he was familiar with the incident location as a known drug location, where marijuana is sold both inside and outside of the building. PO Genao added that he “knows for a fact that § 87(2)(b) hangs out with the drug dealers” in that area.

PO Genao also stated that he was driving northbound on Audubon Avenue in Manhattan when he observed § 87(2)(b) on the opposite side of the street. PO Genao said, “I saw § 87(2)(b) with a marijuana cigar, or what I thought was a marijuana cigar, in his hand. I looped around; by the time I looped around and approached him it was gone.” He described the object as a brown wrapped up cigar. PO Genao stated that § 87(2)(b) did not have any objects in his hands upon approach.

After § 87(2)(b) told PO Genao that he did not have marijuana on his possession and PO Genao asked him if he was sure, PO Genao then began to look on the ground in close proximity to where § 87(2)(b) was standing to see if § 87(2)(b) threw anything onto the ground. PO Genao did not find anything.

While providing his initial narrative during his CCRB interview, PO Genao stated that he did not recall if he frisked § 87(2)(b) PO Genao said, “I don’t believe that I frisked him, but I am not sure. I don’t remember if I frisked him or if I pursued it, I am not sure.” When the issue was revisited during the investigator’s questioning, PO Genao said, “I might have. I don’t remember if I frisked him. I am not sure if I frisked him or not.” PO Genao did not recall if he had any physical contact with § 87(2)(b) during the incident.

When prompted, PO Genao stated that he did not have any reason to suspect § 87(2)(b) had a weapon at any point during the interaction. § 87(2)(b) had a “normal demeanor” and he did not exhibit angry or aggressive behavior during the interaction. PO Genao also stated that he did not have reason to frisk § 87(2)(b) considering the factors surrounding his interaction with § 87(2)(b) (Board Review 05).

PO Checo did not recall the incident under investigation (Board Review 06).

PO McDonnell did not recall the incident under investigation (Board Review 07).

§ 87(2)(g)

People v. De Bour 40 N.Y. 2d 210 (1976) (Board Review 09). The court has defined a seizure of a person to be a significant interruption with an individual’s liberty of movement. Police officers may not seize an individual without some articulable justification.

NYPD Patrol Guide Procedure 212-11 (Board Review 14). A frisk is a carefully limited running of the hands over the outside of an individual’s clothing, feeling for deadly weapons or an instrument, article or substance readily capable of causing serious physical injury.

Matter of Darryl C., 98 A.D. 3d 69 (Board Review 11). The third level of interference with an individual’s liberty, forcible stop and detention, is activated by reasonable suspicion that a specific individual has committed, is committing, or is about to commit a felony or misdemeanor. Under this third level of interference, the officer making the stop has authority to conduct a protective frisk of the individual if there is a reasonable belief of a threat of physical injury or reasonable suspicion that the individual is armed.

New York State Criminal Procedure Law 140.50(3) (Board Review 13). A police officer may conduct a frisk, after a stop, when s/he “reasonably suspects that s/he is in danger of physical injury.”

§ 87(2)(g)

Allegation C –Abuse of Authority: Police Officer Jose Genao searched § 87(2)(b)

It is undisputed that PO Genao stopped § 87(2)(b)

§ 87(2)(b) stated that after PO Genao frisked his cargo shorts, PO Genao placed his hands inside of the top two pockets of the cargo shorts. While PO Genao had his hands inside of his pockets, he asked § 87(2)(b) if he could search the pockets of his cargo shorts. § 87(2)(b) said “yes” because PO Genao’s hands were already in his pockets and he felt that he did not have the opportunity to deny consent (Board Review 04).

PO Genao stated that he did not recall searching any of § 87(2)(b)’s pockets or recall making physical contact with § 87(2)(b) during the incident under investigation (Board Review 05). Unlike the frisk, PO Genao did not offer the possibility that he may have searched § 87(2)(b) during their interaction on the incident date.

PO Checo did not recall the incident under investigation (Board Review 06).

PO McDonnell did not recall the incident under investigation (Board Review 07).

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(4-b) § 87(2)(g)

Squad: 12

Investigator:

Signature

Wassim Abedrabbo

Print

March 3, 2017

Date

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Squad Leader: _____ SI Nicholas Carayannis March 3, 2017
Title/Signature Print Date